UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

TOBIN, CARBERRY, O'MALLEY, RILEY & SELINGER, P.C., Plaintiff	:	
v.	:	Case No. 3:04 CV 1926 (CFD)
RALPH P. DUPONT, Defendant.	:	

RULING ON DEFENDANT'S MOTION TO TRANSFER

The law firm of Tobin, Carberry, O'Malley, Riley & Selinger, P.C. ("TCORS") brought suit against its former law partner Ralph P. Dupont in the Connecticut Superior Court, alleging that Dupont had breached his termination of employment agreement with TCORS and seeking an order directing Dupont to proceed with arbitration under the terms of that agreement. Dupont then removed the action to this Court, pursuant to 28 U.S.C. § 1441.[1] Dupont now has moved under 28 U.S.C. § 1404(a) to transfer this action to the United States District Court for the District of Columbia.

I. Background[2]

Dupont was a partner in TCORS' predecessor law firm of Dupont, Tobin, Levin,

[1] Dupont claimed in his notice of removal that this Court possessed subject matter jurisdiction under 28 U.S.C. § 1331, the federal question provision. It appears that the Court's subject matter jurisdiction instead properly rests on the diversity jurisdiction provisions of 28 U.S.C. § 1332, as the matter in controversy exceeds $75,000 in value and the parties are citizens of Connecticut and Hawaii, respectively. See Doc. #1.

[2] These facts are taken from the plaintiff's complaint and the exhibits attached thereto.

Carberry, & O'Malley, P.C., located in New London, Connecticut, from December 24, 1986 until July 1, 1989.[3] On January 20, 1990, Dupont and his former firm memorialized their mutual agreement to end Dupont's partnership in a written Termination of Employment Agreement.[4] See Doc. #1 at Exh. A. Among other provisions, the termination agreement stated that Dupont was entitled to some portion of the legal fees subsequently received by the firm on two matters that he had staffed during his period of employment. According to the agreement, any such monies would only be payable to Dupont to the extent that the fees received exceeded the "cost advances, disbursements, time-work and counsel fees" accrued by TCORS on those matters. Id at ¶ 3.

The matters covered by this profit-sharing provision of the termination agreement were "two certain matters involving claims by the Estates of William Stanford and Charles Hegna against Kuwait Airways and others for the wrongful death and injury of said decedents. . . ." Id. TCORS claims that after his disassociation with the firm, Dupont won a default judgment for the Estate of Charles Hegna; that this judgment should be considered the conclusion of a matter "that originated while [Dupont] was a member of [TCORS]"; and that pursuant to the Hegna family's original contingent fee agreement with TCORS and Dupont's termination agreement, TCORS is entitled to $321,940 in fees and $103,741 in costs. See Complaint at ¶ 5.

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[3] To diminish confusion, the abbreviation "TCORS" will be used to refer to the plaintiff law firm both in its current incarnation and as it was organized from 1986 to 1990.

[4] Though the termination of employment agreement was not signed until January 20, 1990, its provisions explicitly were made retroactive to July 1, 1989, the last day of Dupont's employment.

II. Discussion

28 U.S.C. § 1404(a) states that "for the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought." The section "is intended to place discretion in the district court to adjudicate motions for transfer according to an 'individualized, case-by-case consideration of convenience and fairness.'" Stewart Org., Inc., v. Ricoh Corp., 487 U.S. 22, 29 (1988) (quoting Van Dusen v. Barrack, 376 U.S. 612, 622 (1964)). "The burden of justifying transfer of venue . . . lies with the moving party, who must make a clear and convincing showing that transfer should be made." Kodak Polychrome Graphics, LLC, Plaintiff v. Southwest Precision Printers, Inc., 2005 U.S. Dist. LEXIS 23359, *2-*3 (D. Conn. Oct. 7, 2005); see also O'Brien v. Okemo Mt., 17 F. Supp. 2d 98, 104 (D. Conn. 1998) (movant's burden to show that the relevant factors "strongly favor" transfer). The factors to be considered by a district court in evaluating a motion for transfer under § 1404(a) include "convenience of the parties and witnesses, availability of process to compel unwilling witnesses to testify, location of the relevant documents, locus of the operative facts, relative means of the parties, the forum's familiarity with governing law, plaintiff's choice of forum, and the interests of justice." A Slice of Pie Prods v. Wayans Bros. Entm't, 392 F. Supp. 2d 297, 305 (D. Conn. 2005).

Dupont primarily argues that transfer to the District Court for the District of Columbia is in the interests of justice because that court decided the action involving the estate of Charles Hegna that forms the basis of this dispute.[5] He further argues that the parties represented by

[5] Dupont also argues that he intends to file a motion for transfer in another action pending against him in this district, Durant, Nichols, Houston, Hodgson & Cortese-Costa, PC v. Dupont, Civil Action No. 3:04-cv-1365(JBA), and that transferring the case before this Court would serve

Dupont in the underlying actions would be required to testify in this dispute; since two of those persons live in Virginia, transfer to the District of Columbia would be more convenient for them.[6]

The Court cannot agree, on the record before it, that transfer of this case is warranted in the interests of justice. At base, this dispute is a contractual one, involving a termination of employment agreement executed in Connecticut by a Connecticut law firm and one of its former partners.[7] By its own terms, the termination agreement calls for dispute resolution "consistent with the laws of the State of Connecticut." Doc. #1 at Exh. A. Neither of the parties to this lawsuit reside in the District of Columbia. The convenience of the parties, the locus of the operative facts, the forum's familiarity with the governing law, and the plaintiff's choice of forum all support retaining this case in Connecticut.

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judicial economy by allowing both cases to be consolidated in the District Court for the District of Columbia. Since the filing of his papers in this case, however, Durant v. Dupont was terminated by the District of Connecticut on May 17, 2005, and now is pending appeal before the U.S. Court of Appeals for the Second Circuit. As Durant v. Dupont never was transferred to the District of Columbia, the Court will not consider that case in evaluating Dupont's instant motion to transfer.

[6] The other potential witnesses identified by Dupont are, by his own admission, residents of Arizona and Wisconsin. See Doc. #25 at ¶ 4. The Court concludes that those witnesses would be equally inconvenienced by travel to either Connecticut or the District of Columbia.

[7] Despite Dupont's contention that the District of Columbia is better suited to hear this case due to the frequency of international tort claims litigated there and its "unique involvement with . . . enforcing judgments against terrorist states" (as was apparently ordered in the Hegna claim), the Court does not agree that this specialized knowledge of international law could not be attained by this Court. Also, while such issues may be incidentally implicated in deciding this claim, the governing law of the agreement is that of contract, and the agreement specifically provides that Connecticut law applies to it. See Doc. #1 at Exh. A, ¶ 10.

III. Conclusion

For the above reasons, the Defendant's Motion for an Order of Transfer [Doc. #25] is DENIED.

So ordered this _24th_ day of March 2006 at Hartford, Connecticut.

__/s/ CFD _____
CHRISTOPHER F. DRONEY
UNITED STATES DISTRICT JUDGE